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November 8, 2022

*Via: Certified mail return receipt requested.*

Mr. Wesley Hutchins  
6304 Avalon Woods Dr.  
McKinney, TX 75072-8763

Mr. Roy Hutchins  
1320 Camino Real  
Fairview, TX 75069

Re: Hutchins Barbecue Trademark Infringement

Dear Messrs. Hutchins:

Mr. Timothy M. Hutchins, Hutchins BBQ, LLC and Hutchins BBQ Catering Co., LLC (collectively Hutchins BBQ) have retained my firm regarding conduct we understand is infringing on Hutchins BBQ's intellectual property rights. We have recently learned that you have been engaging in efforts to establish and operate a barbecue restaurant entitled Hutchins Barbeque, the Original Hutchins Barbeque, or some variation thereof. In furtherance of these efforts, we understand that you have held yourselves out under the Hutchins Barbeque name, raised investment funds under that name, and created signage under that name. We have further learned of efforts calculated to copy the look and feel of existing Hutchins Barbeque operations.

As you are aware, my clients possess intellectual property rights, including registered trademarks, to the Hutchins Barbeque name, logo, and branding, such as signage. My clients further possess intellectual property rights in the look and feel of their restaurants and the trade secrets underlying their restaurants' operations.

Your efforts to represent and hold yourselves out under the Hutchins Barbecue name and trade dress improperly and unlawfully infringe upon my clients' trademarks and trade dress. In violation of both state and federal law, you are improperly profiting from the reputation and goodwill associated with the legitimate Hutchins Barbeque. These actions are further creating a serious and imminent risk of irreparable damage to the Hutchins Barbeque trademarks, by way of creating false and damaging associations between your infringing business and the established, legitimate Hutchins Barbecue.

Your conduct violates numerous provisions of both the federal Lanham Act (15 U.S.C. § 1051, *et seq.*) and the Texas Business and Commerce Code, including but not limited to the following: trademark infringement (federal and state), unfair competition (federal and state), false designation of origin (federal), and trademark dilution (state). My clients' trademark protections are particularly strong in this instance given their registration and acquired distinctiveness; the infringing activities are identical to my clients' marks; you are selling the very same products; and you are engaging in your infringing conduct within the very same market. Further, any infringement would certainly be found willful, given that you are proceeding despite clear knowledge of the registered and protected trademarks. Such willful infringement will provide basis for enhanced damages and attorneys' fees.

Should you choose to continue any of your infringing conduct and thereby force my clients to proceed with litigation, my clients will seek judgment against you for: (1) an award of any profits you have derived from your unlawful and infringing conduct; (2) an award of any damages sustained by my clients as a result of your unlawful and infringing conduct; (3) reimbursement of the costs incurred in pursuing said litigation, including investigative costs; (4) compensation in the form of a reasonable royalty; (5) reimbursement of the cost of any corrective advertising; and/or (6) an award of attorney's fees. Your willful infringement will also entitle my clients to an award of up to treble damages (*i.e.*, up to three times the amount of actual damages). Furthermore, my clients will seek entry of temporary and permanent injunctions explicitly ordering you to cease and desist any further infringing conduct.

If you wish to avoid my clients filing a lawsuit against you, my clients demand that you *immediately* take each of the following actions:

1. Cease and desist all unlawful and/or infringing conduct involving the use of my client's federally registered trademarks including by way of specific example and not of limitation any use of the term "Hutchins Barbeque" whether alone or in combination with any other words or designations;
2. Destroy any and all items which unlawfully bear the trademark(s) of my client, including but not limited to: any advertising materials, promotional materials, merchandise, and/or signage, whether tangible or electronic in nature, that employ the term "Hutchins Barbeque" whether alone or in combination with any other words or designations or that employ a similar look and/or feel to the colors, logos or other trade dress of my clients; and
3. Within five (5) business days of receipt of this letter, provide: (1) a detailed accounting of all sales proceeds or other profits earned or derived by your infringing business activities in relation to the sale or promotion of any and all products, merchandise, and/or services bearing the trademark(s) of my clients; and (2) a list of any and all vendors, contractors, suppliers, investors, and/or any other individuals or entities who you contacted in furtherance of your infringing business or to whom you held yourself out as being affiliated with the legitimate Hutchins Barbeque, to include the name, phone number, an email for each.

If I do not hear from you at the earliest opportunity, but in any event within seven (7) calendar days, my clients will be forced to seek relief from the courts by formal legal action. In

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that event, my clients will seek an award of any and all remedies to which they may be entitled under the law, including by way of example and not of limitation an award of treble damages, recovery of any and all profits derived from your unlawful and infringing conduct, attorney's fees, costs of litigation, and/or a permanent injunction enjoining you from any further unlawful and infringing conduct.

I look forward to your prompt response.

Sincerely,

/s/ R. Ritch Roberts

R. Ritch Roberts, III

Alexandra Hunt

/encl

# United States of America

## United States Patent and Trademark Office

HUTCHINS BARBEQUE

**Reg. No. 6,123,705**

**Registered Aug. 11, 2020**

**Int. Cl.: 43**

**Service Mark**

**Principal Register**

Timothy M. Hutchins (UNITED STATES INDIVIDUAL)  
1301 N. Tennessee Street  
McKinney, TEXAS 75069

CLASS 43: Catering of food and drinks; Catering services; Restaurant and bar services; Restaurant and bar services, including restaurant carryout services; Restaurant services; Restaurant services featuring roasted meats, barbequed meats, and smoked meats; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant, bar and catering services; Food and drink catering; Restaurant and catering services

FIRST USE 00-00-1991; IN COMMERCE 00-00-1991

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

No claim is made to the exclusive right to use the following apart from the mark as shown: "BARBEQUE"

SEC.2(F)

SER. NO. 88-759,282, FILED 01-14-2020



*Andrei Iancu*

Director of the United States  
Patent and Trademark Office



# United States of America

United States Patent and Trademark Office



**Reg. No. 6,183,577**

**Registered Oct. 27, 2020**

**Int. Cl.: 43**

**Service Mark**

**Principal Register**

Timothy M. Hutchins (UNITED STATES INDIVIDUAL)  
1301 N. Tennessee Street  
McKinney, TEXAS 75069

CLASS 43: Catering of food and drinks; Catering services; Restaurant and bar services; Restaurant and bar services, including restaurant carryout services; Restaurant services; Restaurant services featuring roasted meats, barbequed meats, and smoked meats; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant, bar and catering services; Food and drink catering; Restaurant and catering services

FIRST USE 00-00-1991; IN COMMERCE 00-00-1991

The mark consists of the words "HUTCHINS BARBEQUE" superimposed upon an oval with the words "MADE IN TEXAS" and "EST. 1978" written below, with a pictorial representation of the state of Texas in between the words "MADE IN TEXAS" and "EST. 1978".

No claim is made to the exclusive right to use the following apart from the mark as shown: "BARBEQUE," "EST. 1978," "MADE IN TEXAS" AND THE PICTORIAL REPRESENTATION OF TEXAS

SER. NO. 88-759,294, FILED 01-15-2020



*Andrew I. Lerner*

Director of the United States  
Patent and Trademark Office

